

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In Re: Methyl Tertiary Butyl Ether ("MTBE")  
Products Liability Litigation

Master File No. 1:00-1898  
MDL 1358 (SAS)  
M21-88  
ECF Case

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**This document relates to the following case:**

*City of New York v. Amerada Hess Corp., et al.*  
Case No. 04 Civ. 3417

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**PLAINTIFF CITY OF NEW YORK'S MEMORANDUM OF LAW IN SUPPORT  
OF MOTION TO STRIKE DECLARATIONS OF MICHAEL ROMAN, GARY  
STUMPF, AND NORMAN NOVICK**

## **I. INTRODUCTION**

Plaintiff the City of New York (the “City”) hereby moves the Court to strike the unsworn declarations of Michael Roman, Gary Stumpf, and Norman Novick, filed in Case No. 1:04-CV-03417 as Document Numbers 358-10, 358-13 and 358-6 on July 16, 2009. Unsworn declarations are required to contain certain statutory language, which these declarations do not contain. Because they are invalid declarations, the Court should strike them and not consider their contents.

## **II. ARGUMENT**

### **A. Legal Standard**

To ensure the trustworthiness of a declaration, federal law requires that an unsworn declaration be “subscribed by [the declarant], as true under penalty of perjury” and contain an affirmation substantially similar to the following: “I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.” *See* 28 U.S.C. § 1746; Fed. R. Civ. Pro. 43(c). Declarations that do not contain such language are inadmissible and should not be considered. *See Gotlin v. Lederman*, 616 F. Supp. 2d 376, 389 n.7 (E.D.N.Y. 2009) (declaration that did not state that it is “true and correct” and made under “penalty of perjury” inadmissible); *Sterling Fifth Assoc. v. Carpentile Corp., Inc.*, 2003 WL 22227960, at \*5 (S.D.N.Y. Sept. 26, 2003) (holding that where declaration contained the statement it was made under penalty of perjury but failed to state that its contents were “true and correct” that it was “is hard if not impossible” “to rely on the language” it contained); *cf. LeBoeuf, Lamb, Greene & MacRae, L.L.P. v. Worsham*, 185 F.3d 61, 66 (2d Cir. 1999) (finding substantial compliance where declaration stated “Under penalty of perjury, I make the statements contained herein”).

### **B. The Three Declarations Are Improper and Should Be Stricken.**

The declarations of Michael Roman, Gary Stumpf, and Norman Novick do not contain the

statutory requirements explained above. *See* Declaration of Nicholas Campins, Exhs. A-C attaching convenience copies of the declarations. Indeed, none of the declarations contains so much as the words “perjury” or “true.” *See id.* Although the Second Circuit does not require *strict* compliance with the statutory language regarding “penalty of perjury” and “true and correct,” some affirmation of their truth under penalty of perjury must appear in the declarations. *LeBoeuf, Lamb, Greene & MacRae, L.L.P. v. Worsham*, 185 F.3d 61, 66 (2d Cir. 1999). Requiring declarants to swear to the truth of their declarations under penalty of perjury is more than mere formality. Such an affirmation ensures the trustworthiness of the declarations because it subjects the declarant to the risk of criminal penalty. *See Mugno v. Societe Internationale de Telecommunications Aeronautiques, Ltd.*, 2007 WL 316573, at \*9 (E.D.N.Y. Jan. 30, 2007). Declarations submitted without these affirmations or the equivalent are therefore inherently inadmissible and should be stricken.

### III. CONCLUSION

For the foregoing reasons, the City respectfully requests that the Court issue an order striking the declarations of Michael Roman, Gary Stumpf, and Norman Novick.

Dated: San Francisco, California  
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